

### **REMARKS**

This amendment is in response to the Official Action dated November 25, 2009. No claims have been amended, no claims have been canceled, and no claims have been added; as such, claims 1-10 are now pending in this application. Claims 1 and 6-10 are independent claims. Reconsideration and allowance is requested in view of the following remarks. These amendments add no new matter.

### **35 USC § 103 Rejections**

Claims 1-10 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Kelly et al (U.S. 6,952,521, hereinafter referred to as "Kelly '521") in view of Brodersen et al (U.S. 7,200,836, hereinafter referred to as "Brodersen '836"). Applicant respectfully traverses this rejection.

Claim 1 recites:

*An encoding controlling apparatus comprising:*

*offset holding means for holding an offset equivalent to a time period by which to start encoding an audio signal earlier than a video signal upon recording of a chapter;*

*recording mode determining means for determining whether a seamless connection is possible between the preceding chapter and the following chapter in order to set an initial value of said offset depending on an outcome of the determination;*

*offset updating means for updating said offset in keeping with progress in encoding said video signal and said audio signal; and*

*recording controlling means for giving an instruction either to start or to stop the encoding of said video signal and said audio signal in accordance with said offset.*

Kelly '521 fails to disclose, teach, or suggest *"offset holding means for holding an offset equivalent to a time period by which to start encoding an audio signal earlier than a video signal upon recording of a chapter."*

Moreover, Kelly '521 fails to disclose, teach, or suggest *"offset updating means for updating said offset in keeping with progress in encoding said video signal and said audio signal; and recording controlling means for giving an instruction either to start or to stop the encoding of said video signal and said audio signal in accordance with said offset."*

However, the Office Action alleges these features can be found in col. 14, lines 15-20 and col. 12, line 63 to col. 12, line 4. This is wholly inaccurate.

Kelly '521 relates to methods and apparatuses for the editing and subsequent playback of edited audio/video data, and to edited recordings made by such methods and apparatuses. In particular, Kelly '521 discloses a means for producing an edited MPEG audio/video stream from first and second streams recorded in a transport-stream format normally intended for broadcast purposes. A bridge sequence is generated which recodes data from both of the original streams, in the region of the edit point. Padding packets are inserted in the elementary streams to adjust a continuity counter values so as to allow continuous decoding across the join between bridge sequence and second sequence proper. The packets are constrained to certain types of coded pictures, and offset between time-bases is adjusted to avoid buffer overflow.

Kelly '521 discloses how the offset to use for updating the timestamps is given by the difference between the PTS of the first frame after the edit point and the last frame before the edit point, adjusted if necessary in the various steps above. Because not all frames are being displayed, there will be a gap in presentation time for both audio and video. The decoder should freeze the video and mute the audio (see MPEG-2 Conformance Specification, ISO/IEC 13818-4:1995, Section 2.3.3.1.1). If the timestamps were not updated, then the decoder would assume that the audio and video are continuous. This may result in buffer overflow and the loss of data.

In contrast, Applicant's claimed invention eliminates divergences between audio and video data rather than merely attempting to equalize video data temporally with the corresponding audio data on an averaging basis to produce an apparatus for seamlessly connecting chapters.

Col. 14, lines 15-20 of Kelly '521 states:

The audio frames that are presented with video frames are not aligned in the multiplex. Typically the audio that corresponds to the video comes later in the multiplex than the video. However, in general the audio can be up to one second before or one second after the corresponding video in the multiplex.

The Office Action alleges that the above sections of Kelly '521 describes altering the audio from the video a few seconds prior or after the video for synchronization and thus read on the offset holding means of Applicant's claim 1. This is simply not the case. There is no mention of offset holding means for holding an offset equivalent to a time period by which to start encoding an audio signal earlier than a video signal upon recording of a chapter in Kelly '521.

Col. 12, line 63 to col. 12, line 40 of Kelly '521 states:

Audio frames and video pictures having the same presentation time stamp PTS are those which are to be presented simultaneously at the output of the decoder. On the other hand, there is great freedom in the scheduling of packets of data from the different elementary streams, such that audio and video access units having the same PTS value can arrive in the transport stream TS up to one second apart.

The Office Action alleges the above section shows the importance of scheduling that allows for the audio to lag seconds of the video stream and thereby encoding the stream. Though this may be true, which is not admitted, Kelly '521 still fails to mention an offset holding means for holding an offset equivalent to a time period by which to start encoding an audio signal earlier than a video signal upon recording of a chapter.

- **Therefore, Kelly '521 fails to disclose, teach, or suggest offset holding means for holding an offset equivalent to a time period by which to start encoding an audio signal earlier than a video signal upon recording of a chapter.**

In addition, the Office Action admits Kelly '521 fails to disclose, teach, or suggest *"recording mode determining means for determining whether a seamless connection is possible"*

*between the preceding chapter and the following chapter in order to set an initial value of said offset depending on an outcome of the determination,”* but alleges Brodersen ‘836 does. Again this is inaccurate.

Brodersen ‘836 does not remedy the deficiencies of Kelly ‘521, as the various features recited above are also absent from Brodersen ‘836. For example, Applicant’s claimed features of *“offset holding means for holding an offset equivalent to a time period by which to start encoding an audio signal earlier than a video signal upon recording of a chapter,”* are neither disclosed nor suggested by Brodersen ‘836.

Brodersen ‘836 relates generally to mass data storage and retrieval, and more particularly to apparatus and methods for authoring a digital versatile disk. A DVD authoring system in a processor-based system removes an author from consideration of the DVD Specification during authoring. The authoring system provides an authoring engine having an interactive graphical authoring interface, a data management engine, an emulator, a compiler, a multiplexer and a simulator. Using summary authoring data, the compiler builds a skeleton-form PGC layout structure comprising control PGC abstractions and router PGC abstractions. The compiler then resolves the PGC abstractions according to source-target connections. During playback on a DVD player, the PGC abstractions form elements in a connection-switching abstraction superstructure.

There is **no mention** of offset holding means for holding an offset equivalent to a time period by which to start encoding an audio signal earlier than a video signal upon recording of a chapter in Brodersen ‘836.

Since even a combination of the relied upon references would still fail to yield the claimed invention, Applicant submits that a prima facie case of obviousness for claim 1 has not been presented. Applicant also notes that the offered combination appears to be a failed attempt to reconstruct the claimed invention in hindsight, as there is no basis to combine the means for editing digital video recordings of Kelly ‘521 with the means for performing low level DVD configurations function of Brodersen ‘836.

For the reasons stated above, claims 6-10 also are distinct from the Kelly '521 in view of Brodersen '836 (although claims 1 and 6-10 should be interpreted solely based upon the limitations set forth therein). Furthermore, at least for the reason disclosed above, claims 2-5 overcome the combination of Kelly '521 and Brodersen '836 because they depend on independent claim 1 and thus incorporate the distinct features therein, as well as their separately recited patentably distinct features.

Accordingly, Applicant respectfully requests that the rejection of claims 1-10 under 35 U.S.C. § 103(a) as being unpatentable over Kelly '521 in view of Brodersen '836 be withdrawn.

### **Conclusion**

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. SON-3123 from which the undersigned is authorized to draw.

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Respectfully submitted,

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